

**REMARKS**

The Official Action dated March 13, 2006, has been carefully considered. Consideration of the changes and remarks presented herein and reconsideration of the rejections are respectfully requested. By the present amendment, claims 1 and 36 have been amended. Claims 23-35 have been cancelled. Support for the amendments can be found in the specification, claims and drawings as originally filed (for example, see Figs. 9-10). It is believed that these changes do not involve any introduction of new matter, whereby entry is believed to be in order and is respectfully requested. Accordingly, claims 1-22 and 36-38 stand pending in this application. Claims 2-7 and 10-22 have been withdrawn from further consideration as being drawn to nonelected species, therefore, only claims 1, 8, 9 and 36-38 are currently under consideration. However, once claim 1 has been allowed, Applicants request rejoinder of dependent claims 2-7 and 10-22. As set forth below, it is believed that the claims 1, 8, 9 and 36-38 are in condition for allowance.

Claims 1, 8, 9 and 36-38 are rejected under 35 U.S.C. § 103(a) as being anticipated by Papai (U.S. Patent No. 6,585,510) and in further view of Stroble (U.S. Patent No. 1,267,475), Alvarez et al (U.S. Patent No. 1,365,074) and Dunn (U.S. Patent No. 1,165,326). The Examiner asserts that Papai discloses a candle fuel fired container which includes a holder (10) with a top rim, a burn control cover (40) with a chimney (32) having an exhaust hole (35) formed therein, a rim (34) configured to removably attach to the top rim of the holder and a lower ring (36) extending vertically downward. Moreover, the Examiner asserts that the burner control cover (40) includes peaks (28) and troughs (23) that define air intake vents in the rim, such that the burn control cover and holder are configured to vent air into the holder at a circumference of the rim.

The Examiner notes that Papai discloses the present invention except for the fitment. As such, the Examiner relies on the teachings of Stroble, Alvarez et al and Dunn to teach such fitment. The Examiner contends that Stroble provides a fitment (or cover) which is configured to seal a fuel container to prevent the evaporation of volatile constituents of a hydrocarbon fuel. The Examiner asserts that Alvarez et al disclose a cover for the protection of the device during rain, sleet and the like. Finally, the Examiner notes that Dunn teaches a cover for its container to keep out moisture and dirt. As such, the Examiner asserts that it would have been obvious to one of ordinary skill in the art to include a fitment, or cover, that is removably attached to the burn control cover wherein the fitment or cover is configured to seal the candle container, in view of the teachings of Stroble, Alvarez et al and Dunn.

As will be set forth in detail below, it is submitted that the candle containers defined by claim 1, 8, 9 and 36-38 are non-obvious over and are patentably distinguishable from Papai and in further view of Stroble, Alvarez et al and Dunn. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

The candle container as defined by claim 1, on which claims 8 and 9 depend, includes a holder. The holder includes a top rim. The burn control cover has a top surface with an exhaust hole formed therein, a rim and a lower ring. The rim is configured to removably attach to the top rim of the holder. The lower ring extends vertically down from an interior surface of the burn control cover and extends below the top rim of the holder when the burn control cover is attached to the holder. The fitment is removably attached to the burn control cover. The fitment is configured to seal the candle container. The burn control cover and holder are configured to vent air into the holder at a circumference of the rim.

The candle container as defined by claim 36, on which claims 37 and 38 depend, includes a holder and a burn control cover. The holder includes a top rim. The burn control cover has a

top surface with an exhaust hole formed therein, a rim and a lower ring. The rim extends along the circumference of the burn control cover and is configured to removably attach to the top rim of the holder. The lower ring extends vertically down from an interior surface of the burn control cover and extends below the top rim of the holder when the burn control cover is attached to the holder. The rim of the burn control cover includes peaks and troughs to define air intake vents between the burn control cover and the holder which are configured to vent air into the holder of the candle container.

Papai generally discloses a venting cover or plate that can be used with a containerized candle regardless of shape, wick configuration or dimension (abstract). The venting cover stabilizes the combustion flame and improves the efficiency of the combustion of containerized candles, thereby reducing candle smoke (abstract).

Stroble generally discloses burners or devices for burning solid hydrocarbon fuel such as solid alcohol (p. 1, lines 9-11).

Alvarez et al disclose an orchard heater for the combustion of fuel which controls the burning of the fuel such that the heater can be moved from place to place (p. 1, lines 12-24).

Dunn discloses a stack for orchard heaters such that air is efficiently mixed with the rising vapors or gas to produce combustion such that maximum heating effect is obtained and distributed over a large area and provides an improved stack readily adaptable to any type of heater (p. 1, lines 9-20).

References relied upon to support a rejection under 35 U.S.C. §103 must provide an enabling disclosure, i.e., they must place the claimed invention in the possession of the public. *Glaxo Inc. v. Novopharm Ltd.*, 34 U.S.P.Q.2d, 1565 (Fed. Cir. 1995); *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). With regard to independent claim 1, Papai fails to teach or suggest a candle container having a fitment removably attached to the burn control cover, the fitment being

positioned between the burn control cover and the holder and configured to seal the candle container. As noted by the Examiner, Papai fails to teach a fitment, and, as such, the Examiner cited Stroble, Alvarez et al and Dunn to teach such a fitment. However, neither Stroble, Alvarez et al nor Dunn provide such a teaching. Rather, Stroble, Alvarez et al and Dunn all teach "covers" for heater type devices which generally serve the purpose of preventing the release of hydrocarbon fuel or to prevent moisture from entering the heater. Moreover, the covers disclosed in Stroble, Alvarez et al and Dunn are on the outside of these heater devices and are not positioned between the burn control cover and holder and configured to seal a candle container, as presently recited in claim 1. As such, Papai in view of Stroble, Alvarez et al and Dunn do not render claims 1, 8 and 9 obvious because there is no teaching or suggestion of a fitment positioned between the burn control cover and the holder, as presently recited in independent claim 1. Accordingly, Applicants respectfully request reconsideration and allowance of claims 1, 8 and 9.

With regard to independent claim 36, Papai fails to teach a burn control cover having a rim extending along the circumference of the burn control cover, wherein the rim has peaks and troughs defining air intake vents between the burn control cover and the holder which are configured to vent air into the holder of the candle container. Rather, Papai teaches a venting cover with a rim (24) that is placed over the top of a container in which a candle is placed. The Examiner contends that the mounting bosses (28) in Papai are peaks and that the bottom surface (23) is a trough. However, these components are not part of the rim (24) of the venting plate of Papai which has a single arrangement along the circumference of the venting plate. The rim (24) of Papai has the same construction along the entire circumference and does not teach or suggest having peaks or troughs to define air intake vents. As noted above, a reference must provide an enabling disclosure to support a rejection under 35 U.S.C. §103. As such, Papai fails to provide

such a disclosure because Papai fails to teach, suggest, or motivate one to provide a candle container as recited in independent claim 36.

In addition, the combination of Stroble, Alvarez et al or Dunn with Papai fails to overcome the deficiencies of Papai. Stroble, Alvarez et al and Dunn all generally disclose covers for various devices. The covers taught by Stroble, Alvarez et al and Dunn do not teach a burn control cover which has a rim extending along the circumference of the burn control cover, wherein the rim has peaks and troughs defining air intake vents between the burn control cover and the holder which are configured to vent air into the holder of the candle container, as recited in independent claim 36. Therefore, Papai in view of Stroble, Alvarez et al and Dunn fail to teach or suggest a candle container having a burn control cover which has a rim extending along the circumference of the burn control cover, wherein the rim has peaks and troughs defining air intake vents between the burn control cover and the holder as recited in independent claim 36. Accordingly, Applicants respectfully request reconsideration and allowance of claims 36-38.

It is believed that the above amendments and remarks represent a complete response to the Examiner's rejection under 35 U.S.C. § 103, and as such, place the present application in condition for allowance. Reconsideration and an early allowance are requested.

Respectfully submitted,



Clayton L. Kuhnell, Reg. No. 48,691  
DINSMORE & SHOHL LLP  
1900 Chemed Center  
255 E. Fifth Street  
Cincinnati, Ohio 45202  
(513) 977-8377